

GIACOMINA MARINI-GONZALES, PETITIONER, VS. HON. GUARDSON R. LOOD, PRE-SIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, SIXTH BRANCH PASIG, RIZAL; CELIA ANGELES--PASCUA; ELISEO ZA...*G.R. No. L-35098. March 16, 1987*

Ponente: PADILLA, J.

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This is a petition for certiorari to annul and set aside the orders issued by the respondent Judge in Civil Case no. 12296 of the then Court of First Instance of Rizal, Pasig Branch VI, on (1) 12 February 1972, which denied petitioner's Omnibus Motion; (2) 25 March 1972, appointing the respondent Eliseo Zari, assistant clerk of court of respondent court, as the legal representative of the deceased defendant Rafael J. Gonzales; (3) 14 April 1972, which denied petitioner's motion for reconsideration of the Order dated 12 February 1972; and (4) 17 May 1972, which denied petitioner's motion for reconsideration of the Order dated 25 March 1972.

The records show that on 19 September 1969, the herein petitioner, Giacomina Marini-Gonzales, now deceased and represented by the special administrator of her estate, Atty. Norberto J. Quisumbing,[1] filed a complaint against her husband Rafael J. Gonzales and Celia Angeles-Pascua, Esteban S. Angeles, Rogelio S. Angeles, Sinforesa Salvador-Angeles, Remedios Angeles-Ferraer, Florencio Ferraer, Jaime Angeles, Benjamin Angeles, Merlina Torres-Angeles, and Lourdes Angeles-Acabe and her husband whose first name is unknown to the plaintiff, in the then Court of First Instance of Rizal, docketed as Civil Case no. 12296, for the annulment of allegedly fraudulent disposition of various properties, both real and personal, therein listed, made by the said Rafael J. Gonzales in favor of his co-defendants, allegedly in fraud of plaintiff and in impairment of her interest in the conjugal partnership properties, and without her knowledge and consent. The complaint also asked for damages.[2]

In answer, the defendant Rafael J. Gonzales claimed that all the conjugal assets which are in his possession were not used in any way for or transferred to the other defendants; and that the properties owned by his co-defendants were not derived from the conjugal properties owned by him and the plaintiff.[3]

His co-defendants, for their part, alleged that the properties listed in the complaint were bought or acquired, not with funds from the conjugal partnership of plaintiff and defendant Rafael J. Gonzales, but with funds of the owners thereof.[4]

Pre-trial conferences were held, and thereafter, the deposition of the defendant Rafael J. Gonzales was taken in view of his deteriorating health. The taking of his deposition, however, was not completed because he died on 5 September 1970.

On 25 September 1970, the herein petitioner, in a pleading entitled "Notice of Death of Party and Omnibus Motion" notified the court of the death of the defendant Rafael J. Gonzales and of her appointment by the then

Court of First Instance of Rizal (Quezon City branch) in Special Proceeding No. Q-14838 as special administratrix of his testate estate, and prayed that she be substituted in place of the deceased; that the pleadings, motions and papers, including the Answer with Counterclaim filed by the decedent, be withdrawn and stricken out; and that she be granted leave to amend her own complaint so as to allege therein her two capacities and rights — one, as wife and two, as special administratrix of the testate estate of the late Rafael J. Gonzales.[5] Later, the probate court appointed said plaintiff (herein petitioner) as executrix in the testate estate of the late Rafael J. Gonzales.[6] She is also the sole heir under his will.[7]

Considering the Omnibus Motion, respondent Judge ordered the parties "to submit their amended pleading in accordance with the Rules of Court within a period of as soon as possible." [8]

Pursuant thereto, the petitioner filed a "Compliance and Motion" reiterating her prayer for the immediate grant of her Omnibus Motion filed earlier. A copy of an Amended Complaint was appended to her motion.[9]

The respondent Judge, however, in an Order dated 12 February 1972, denied the Omnibus Motion for lack of merit.[10] Counsel for the petitioner received a copy of the Order on 26 February 1972, and on 25 March 1972, he filed a motion for reconsideration of said Order.[11]

On that same day, 25 March 1972, the respondent Judge, upon motion of the herein private respondents, issued an Order appointing Atty. Eliseo Zari, the assistant clerk of court, the legal representative of the defendant Rafael J. Gonzales in the case.[12] Upon receipt of a copy of this Order, counsel for the petitioner also filed a motion for its reconsideration, and when both motions for reconsideration were denied on 14 April 1972[13] and 17 May 1972,[14] respectively, he filed the instant petition for certiorari with this Court.

The petition was given due course[15] and on 20 March 1973, this court, upon application of the petitioner, issued a temporary restraining order restraining the respondent Judge from proceeding with the initial reception of evidence in Civil Case no. 12297 of the Court of First Instance of Rizal, Branch VI, Pasig.[16]

The first issue raised by the petitioner is whether or not the respondent Judge acted with grave abuse of discretion in denying the proposed amendment to the petitioner's complaint to the end that she, as special administratrix, later, executrix of the testate estate of her late husband Rafael J. Gonzales, be allowed to withdraw the Answer with Counterclaim filed by said deceased during his lifetime and then join cause with her, as plaintiff.

The law applicable is Section 1, Rule 10 of the Rules of Court which provides as follows:

"Sec. 3. Amendments by leave of Court — After the case is set for hearing, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard."

Likewise applicable is the law on estoppel to the effect that —

"A party who has, with knowledge of the facts, assumed a particular position in judicial proceedings, and has succeeded in maintaining that position, is estopped to assume a position inconsistent therewith to the prejudice of the adverse party. It is essential also that the party, claiming the estoppel should have acted in reliance thereon, and that his rights would be injuriously affected if his opponent were permitted to change his position. When no wrong is done a change in position should and will be allowed. The rule has no application where the knowledge or means of knowledge of both parties is equal, nor in case of mistake. Also the rule has no application to change a position with respect to matters of law." [17]

There is no doubt that the proposed amendments to the petitioner's complaint would alter the position of Rafael J.

Gonzales, from that of defendant to that of plaintiff. But, while the aforequoted provisions of the Rules of Court authorize the courts to disallow amendment of pleadings when it appears that the same is made to delay an action or that the cause of action or defense is substantially altered thereby, the rule is not absolute. Courts are not precluded from allowing amendments of pleadings even if the same will substantially change the cause of action or defense provided that such amendments do not result in a substantial injury to the adverse party. This is due to the permissive character of said rule. In fact, this court has ruled that amendments to pleadings are favored and should be liberally allowed in the furtherance of justice.[18]

The same is true with the principle of estoppel, just mentioned. It is essential that the rights of the adverse party would be seriously affected in order to disallow a change in position, but, when no wrong is done, a change in position may be allowed.

We have examined the records of this case and we find no reason, nor have the private respondents shown any, which would serve as a basis for a finding that they (private respondents) would suffer substantial injury if the proposed amendments were allowed. The mere change in the position of the deceased Rafael J. Gonzales, from defendant to plaintiff, will not, by itself, lend credence to the allegation of the petitioner in her complaint that the properties listed in the complaint belonged to the conjugal partnership of the petitioner and Rafael J. Gonzales and that they were fraudulently transferred to the private respondents, nor will it diminish the private respondents' claim that the said properties were bought or acquired by them with their own funds. The parties, in fact, have yet to prove their respective allegations.

On the other hand, to disallow the amendments proposed by the petitioner would result in some absurdity. As wife and then as executrix and sole heir of the late Rafael J. Gonzales, the petitioner would be 'giving with one hand and also receiving with the other', in the event that judgment were to be rendered for or against the deceased defendant.

The other issue raised is whether or not the respondent Judge abused his discretion in ordering the respondent Eliseo Zari to represent the deceased Rafael J. Gonzales as party defendant in this case. The petitioner contends that the appointment of another legal representative for the late Rafael J. Gonzales is null and void in view of her appointment as the special administratrix, later, executrix of the testate estate of Rafael J. Gonzales, not to mention that she is the sole heir under his will.[19]

We agree with petitioner's contention. Under the provisions of Section 2, Rule 87 of the Rules of Court, it is the executor or administrator of the estate of the decedent who may bring or defend actions in the name of the deceased, and this Court has ruled that the choice of an executor is the sole prerogative of the testator and is not addressed to the discretion of the court. In the case of *Ozaeta vs. Pecson*,[20] this Court said:

"The choice of his executor is a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes. It is natural that the testator should desire to appoint one of his confidence, one who can be trusted to carry out his wishes in the disposal of his estate. The curtailment of this right may be considered as a curtailment of the rights to dispose. And as the rights granted by him will take effect from the time of his death (Article 777, Civil Code of the Philippines), the management of his estate by the administrator of his choice should be made as soon as practicable, when no reasonable objection to his assumption of the trust can be interposed any longer. It has been held that when a will has been admitted to probate, it is the duty of this court to issue letters testamentary to the person named as executor upon his application (23 C.J. 1023). It is the testator that appoints his executor, as the question as to his peculiar fitness for such position or his want of ability to manage the estate cannot be addressed to the discretion of the county judge. (*Holbrook vs. Head*, 6 S.W. 592, 593, 9 Ky 755)."

Furthermore, the joinder of the deceased Rafael J. Gonzales as party defendant is no longer necessary and may be

dispensed with, since no cross-claim has been filed against him by his co-defendants (private respondents herein); and the petitioner's right under Article 173 of the Civil Code may be enforced against third persons even without joining her husband as party defendant.

We find from all the foregoing, and so rule, that the respondent Judge gravely abused his discretion in denying the petitioner's Omnibus Motion. Courts should be liberal in allowing amendments to pleadings, especially where such amendments will serve the ends of justice and avoid multiplicity of suits.

WHEREFORE, the petition is GRANTED and a writ issued, annulling and setting aside the Orders issued by the respondent Judge in Civil Case no. 12296 of the then Court of First Instance of Rizal, Branch VI, Pasig, on 12 February 1972, 25 March 1972, 14 April 1972, and 17 May 1972. The temporary restraining order, earlier issued by this Court, is hereby made permanent. Costs against private respondents.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Bidin, and Cortes, JJ., concur.

Alampay, J., no part (did not participate in the deliberation; he was then on official leave).

[1] Rollo, p. 196

[2] Id., p. 3

[3] Id., p. 4

[4] Id., p. 3

[5] Id., p. 46

[6] Id., pp. 128-129

[7] Id., p. 113

[8] Id., p. 6

[9] Id., pp. 48-51

[10] Id., p. 23

[11] Id., p. 26

[12] Id., p. 20

[13] Id., p. 21

[14] Id., p. 124

[15] Id., p. 21

[16] Id., p. 173

[17] 21 C.J. pp. 1223-1225

[18] Torres vs. Tomacruz, 49 Phil. 913

[19] Parenthetically, while Atty. Eliseo Zari, Assistant Clerk of Court, was appointed by the respondent Judge the

legal representative of the decedent Rafael J. Gonzales on 25 March 1972, this Court, on 27 June 1975, in *Balanay, Jr. vs. Hon. Antonio M. Martinez*, G.R. No. L-39247, 64 SCRA 452, expressed disapproval of the appointment by probate courts of branch clerks of court as administrators of estates pending settlement before them; see also Supreme Court Memorandum Circular to all Judges of Courts of First Instance dated 15 August 1975.

[20] 93 Phil. 416, 420

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